

Elaine Kitter *for Plaintiff*

UNITED STATES DISTRICT COURT FOR
SOUTHERN DISTRICT OF NEW YORK

ELAINE L. CHAO, Secretary of Labor,
United States Department of Labor,

Plaintiff,	:	Civil Action
v.	:	File No. 07-CV-07422-LLS
E & D LLC D/B/A THE PRIME GRILL, a Limited Liability Corporation,	:	F _____
Defendant.	:	

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8/28/07

CONSENT JUDGEMENT

Plaintiff, the Secretary, has filed her Complaint and defendants E & D LLC D/B/A THE PRIME GRILL a Limited Liability Corporation appeared by Counsel, and an agreement was reached by all the parties to resolve all the issues raised in this action. Defendant acknowledges responsibilities pursuant to this agreement, and acknowledges that they will be subject to sanctions in contempt of this Court if they fail to comply with the provisions of this Judgment. Defendant, without admitting or denying the allegations of the Complaint and without waiving or prejudicing any future claim of exemption pursuant to Section 7 of the Act for any employees paid hereunder or those similarly employed, consent to the entry of this Judgment, and it is therefore upon motion of the attorneys for the Secretary and for good cause shown:

I. ORDERED that defendant, their officers, employees, agents, and all persons acting in the defendants' behalf and interest is permanently enjoined and restrained from violating the provisions of Sections 7 and 15(a)(2) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. Section 201 et seq.), (the Act), specifically as follows:

(1) Defendant shall pay non-exempt employees at time and one-half their regular hourly rates for all hours worked over 40 per week.

(2) Defendant shall make, keep, and preserve accurate and complete records of their employees and of the wages, hours, and other conditions and practices of employment maintained by them as prescribed by the Regulations issued pursuant to Section 11 (c) of the Act and found at 29 CFR Part 516. Defendant shall also periodically monitor the payroll formula used by any company retained to do its payroll for such company's compliance with the foregoing; and it is further,

II. ORDERED that the defendant is enjoined and restrained from withholding the payment of overtime compensation due their employees listed in exhibit A, the total amount of \$16,708.49 plus interest. Payment of that sum shall be made in full on or before August 1, 2007, payable to the order of "Wage and Hour Labor". The Fair Labor Standards Civil Money Penalty shall be paid in a separate certified check of \$6,000.00 plus interest, by sending one separate certified check made out to "U.S. Department of Labor" in the full amount to:

**The Curtis Center, Suite 850 West
170 South Independence Mall
Philadelphia, PA 19106-3317**

III. And it is further ORDERED that a copy of each certified check shall be simultaneously sent to Alfonso H. Holder, Assistant District Director, U.S. Department of Labor, Wage Hour Division, 26 Federal Plaza, Room 3700, New York, New York 10278 and Douglas Weiner, Esquire, U.S. Department of Labor, Office of the Regional Solicitor, 201 Varick Street, Room 983, New York, New York 10014. The Secretary shall distribute the defendants' payments to the employees and former employees, or to their estates, as set forth in Exhibits A. Defendant shall provide to plaintiff the social security number and last known address of each employee or former employee listed in Exhibit A of this Judgment. Any sums not distributed to the employees or former employees named herein, or to their personal representatives because of inability to

M.V. locate the proper persons or because of such persons' refusal to accept such sums, shall be deposited with the Clerk of this Court who shall deposit such money with the Treasurer of the United States; and it is further

IV. ORDERED that neither defendant nor anyone on their behalf shall directly or indirectly solicit or accept the return or refusal of any sums paid under this Judgment; and it is further

V. ORDERED that if the defendant fails to make the payments as set forth above, then the Court shall appoint John Braslow, Esquire as a Receiver. If John Braslow, Esquire is unavailable or declines to act as a Receiver, the plaintiff shall provide the Court with the names of potential Receivers. The Court may appoint the Receiver from those offered by the Secretary or may appoint another Receiver at its discretion. In the event a Receiver is appointed, it is further

VI. ORDERED that defendant shall produce to the Court appointed Receiver all books and records any other information the Receiver requires to carry out the provisions of this Judgment. In addition, the defendant shall submit to a sworn accounting by an independent certified public accountant and/or the Receiver, and shall testify, if the accountant or Receiver so decides; and it is further

VII. ORDERED that all the expenses of the accountant or Receiver shall be borne solely by defendants; and it is further

VIII. ORDERED that if the Court appoints a Receiver, the Receiver shall serve until the payment of the monetary terms of this Judgment are satisfied; and it is further

IX. ORDERED that the Receiver shall have full authority to: collect the Defendant's assets and report his findings to the Court and the parties; to redeem and/or liquidate the defendant's assets and turn over the proceeds to the Secretary; if the asset is a debt that is due, collect it and turn over the proceeds to the Secretary; to analyze all indebtedness and where deemed appropriate seek restructuring;

to analyze all transfers of the defendant's assets; to prevent waste or fraud; and to do all acts and take all measures necessary or proper for the efficient performance of the duties under this Judgment and Order; and it is further

X. ORDERED that defendant shall place posters provided by the Wage and Hour Division with information about the FLSA where employees may view them; and it is further

XI. ORDERED that neither the commencement of this action nor the provisions of this Consent Judgment shall in any way affect, determine, or prejudice any and all legal rights of any employees of defendant not listed in Exhibit A to file any action against defendants under Section 16(b) of the Act, or likewise for any current or former employee listed in Exhibits A to file any action against defendants under Section 16(b) of the Act for any violations alleged to have occurred after December 2, 2006; and it is further

XII. ORDERED that each party will bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

SO ORDERED:

Louis L. Stanton

HONORABLE LOUIS L. STANTON
UNITED STATES DISTRICT JUDGE

DATED: *August 28, 2007*
New York, New York

Defendants have appeared by counsel, and hereby consent to the entry of this Judgment.

E & D, LLC doing business as the Prime Grill

By:

[Signature]
Joey Allaham, Managing Member
Authorized corporate officer

[Signature]
Attorney for all Defendants

[Signature]
Douglas Weiner

Douglas Weiner
Senior Trial Attorney
United States Department of Labor

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON _____

RESOLVED, that E & D LLC hereby ratifies and confirms the offer made to ELAINE L. CHAO, Secretary of Labor, with respect to the alleged violations of the Fair Labor Standards Act of 1938, as amended, and that the LLC consents to the entry of this Judgment against it to be entered in an action which has been filed by the Secretary of Labor against it. The officers are authorized to do and perform all acts and things necessary to effectuate the provisions of said Judgment and any or all stipulations, amendments and changes therein.

BY:

Authorized officer

STATE OF NEW YORK)
COUNTY OF KINGS)

On the 26th day of July, 2007 before me personally appeared JOEY ALLAHAM, to me known and known to me to be the individual described in and who executed the foregoing instrument on behalf of E & D LLC and he duly acknowledged to me that he executed the same.

NOTARY PUBLIC

THOMAS RUBERTONE, JR.
Notary Public, State of New York
No. 02RNU023788
Qualified in New York County
Commission Expires April 26, 20~~11~~

05-29-2007 11:19 FAX

US DOL

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EXHIBIT A

Summary of Unpaid Wages

U.S. Department of Labor

Employment Standards Administration



Wage and Hour Division

(Office Address) New York City District Office
26 Federal Plaza
Suite 3700
New York, NY 10278-0190
212-264-8165

Investigator:

Jacqueline Petricevic

Date:

05/29/2007

Employer Fed Tax ID Number

13-4119349

1. Name	2. Address	3. Period Covered by Work Week Ending Dates	4. Act(s)	5. Gross Amounts Due
1. AHMED, ZULU		10/23/2004 to 10/28/2006		\$102.25
2. ALAM, MOHAMMED		10/23/2004 to 10/28/2006		\$115.28
3. ALTAMIRANO, JAIME		10/23/2004 to 10/28/2006		\$212.07
4. ALVAREZ, RAMON		10/23/2004 to 10/28/2006		\$128.00
5. ANIKEYEVA, ALA		04/01/2006 to 04/29/2006		\$921.60
6. ANTENE, JOSE		10/23/2004 to 10/28/2006		\$104.00
7. BATIS, JULIO		10/23/2004 to 10/28/2006		\$123.25
8. BECERRIL, HUGO		10/23/2004 to 10/28/2006		\$70.47
9. BECERRIL, INOCENCIO		10/23/2004 to 10/28/2006		\$142.39
10. BECERRIL, REYES		10/23/2004 to 10/28/2006		\$119.50
11. BECK, EMILY		10/23/2004 to 10/28/2006		\$60.50
12. BIANCO, CLAUDIA		10/23/2004 to 10/28/2006		\$214.73
13. Camacho, Dan		04/22/2006 to 04/22/2006		\$221.20
14. CASTILLO, MARGARITA		10/23/2004 to 10/28/2006		\$26.00
15. CONTRERAS, JUAN F		10/23/2004 to 10/28/2006		\$46.78
16. DELGADILLO, ANDRES		04/08/2006 to 04/22/2006		\$2,000.00

I agree to pay the listed employees the back wages shown due and to mail proof of payment to the Wage and Hour District Office shown above by

Employer Name and Address:

Prime Grill
E & D LLC
60 East 49th Street

Subtotal \$4,608.02

* Column 4-Code

FLSA	1
PCA	2
SCA	3
DBRA	4
CWHSAA	5
CCPA	6
FMLA	7

Signed: _____

New York, NY 10017

Form WH-56

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US DOL

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Summary of Unpaid Wages

U.S. Department of Labor
 Employment Standards Administration
 Wage and Hour Division



(Office Address) New York City District Office
 26 Federal Plaza
 Suite 3700
 New York, NY 10278-0190
 212-264-8185

Investigator:	Date:
Jacqueline Petricevic	05/29/2007
Employer Fed Tax ID Number	
13-4119349	

1. Name	2. Address	3. Period Covered by Work Week Ending Dates	4. Act(s)	5. Gross Amounts Due
17. DELUCA, VERONICA		10/23/2004 to 10/28/2006		\$102.00
18. DIAAB, JAHIDAH		10/23/2004 to 10/28/2006		\$183.32
19. DORADO, DANIEL		12/25/2004 to 01/08/2005		\$199.99
20. FRANCO, BALTAZAR		10/23/2004 to 10/28/2006		\$73.91
21. GONZALES, OSCAR		10/23/2004 to 10/28/2006		\$153.25
22. GUALLPA, MARCO		10/23/2004 to 10/28/2006		\$127.35
23. GUTIERREZ, ALEX		10/23/2004 to 10/28/2006		\$309.08
24. GUZMAN, CLAUDIO		10/23/2004 to 10/28/2006		\$186.68
25. HERNANDEZ, JOSE L		10/23/2004 to 10/28/2006		\$1,461.68
26. HUGO, EDGAR		10/23/2004 to 10/28/2006		\$25.80
27. HULSMANN, ALFRED		05/20/2006 to 06/03/2006		\$1,500.00
28. KING, TANYA		10/23/2004 to 10/28/2006		\$60.00
29. KUIZINATE, KARINA		10/23/2004 to 10/28/2006		\$194.25
30. LANDIK, SERGE		10/23/2004 to 10/28/2006		\$115.95
31. LOPEZ, MAURICIO		10/23/2004 to 10/28/2006		\$237.55
32. MARTINEZ, SILVIA		10/23/2004 to 10/28/2006		\$98.00

I agree to pay the listed employees the back wages shown due and to mail proof of payment to the Wage and Hour District Office shown above by

Signed:

Employer Name and Address:
 Prime Grill
 E & D LLC
 60 East 49th Street

New York, NY 10017

Subtotal : \$5,028.81

* Column 4 Code

FLSA	1
PCA	2
SCA	3
DBRA	4
CWHSAA	5
COPA	6
FMLA	7

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Summary of Unpaid Wages

U.S. Department of Labor

Employment Standards Administration



(Office Address) New York City District Office
26 Federal Plaza
Suite 3703
New York, NY 10036-0150
212-264-8185

Investigator:
Jacqueline Petricavich

Date:
05/29/2007

Employer Fed Tax ID Number
13-4119349

1. Name	2. Address	3. Period Covered by Work Week Ending Dates	4. Act(s)	5. Gross Amounts Due
33. MEJIA, LUIS		10/23/2004 to 10/28/2006		\$513.02
34. MEJIA, NOE		10/23/2004 to 10/28/2006		\$60.00
35. MENDOZA, JUAN		10/23/2004 to 10/28/2006		\$119.00
36. MEZA, MERCED		10/23/2004 to 10/28/2006		\$104.00
37. MORALES, RAMIRO		10/23/2004 to 10/28/2006		\$36.84
38. MOZ, CRUZ		10/23/2004 to 10/28/2006		\$317.15
39. NAVA, EDGAR		10/23/2004 to 10/28/2006		\$499.32
40. OLIVARES, BENJAMIN		10/23/2004 to 10/28/2006		\$82.82
41. Pena, Evelyn		04/08/2006 to 04/29/2006		\$921.60
42. PEREZ, JUAN		10/23/2004 to 10/28/2006		\$116.25
43. REINA, DANNY		10/23/2004 to 10/28/2006		\$159.96
44. RIVERA, REYMUNDO		10/23/2004 to 10/28/2006		\$221.00
45. RODRIGUEZ, ROGELIO		10/23/2004 to 10/28/2006		\$84.00
46. ROMAN, ALVARO		10/23/2004 to 10/28/2006		\$102.00
47. ROMAN, JOSEPH		10/23/2004 to 10/28/2006		\$115.70
48. Serna, Beatriz		04/15/2006 to 04/29/2006		\$1,500.00

I agree to pay the listed employees the back wages shown due and to mail proof of payment to the Wage and Hour District Office shown above by

Employer Name and Address:

Prime Grill
E & D LLC
60 East 49th Street

Subtotal \$4,952.66

* Column 4-Code

FLSA	1
PCA	2
SCA	3
OERA	4
CWHSAA	5
CCPA	6
FMLA	7

Signed:

New York, NY 10017

Form WH-56

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US DOL

002

Summary of Unpaid Wages

U.S. Department of Labor

Employment Standards Administration



Wage and Hour Division

(Office Address) New York City District Office
26 Federal Plaza
Suite 3700
New York, NY 10278-0190
212-264-8185

Investigator:
Jacqueline Petricevic

Date:

05/29/2007

Employer Fed Tax ID Number
13-4119349

1. Name	2. Address	3. Period Covered by Work Week Ending Dates	4. Act(s)	5. Gross Amounts Due
49. SIQAL, FAYCAL		10/23/2004 to 10/28/2006		\$183.64
50. SIQAL, YOUNES		10/23/2004 to 10/28/2006		\$154.60
51. SOBRANES, BENITO		10/23/2004 to 10/28/2006		\$270.00
52. SUQUINAGUA, LUIS		10/23/2004 to 10/28/2006		\$32.10
53. SZKODZINSKI, JANINA		10/23/2004 to 10/28/2006		\$61.20
54. TORRES, JOSE R		10/23/2004 to 10/28/2006		\$137.92
55. TOSHEVSKA, VANYA		10/23/2004 to 10/28/2006		\$216.90
56. WOGNIAK, JONATHAN		03/11/2006 to 04/08/2006		\$750.00
57. ZEKAJ, ROLAND		10/23/2004 to 10/28/2006		\$312.64

I agree to pay the listed employees the back wages shown due and to mail proof of payment to the Wage and Hour District Office shown above by

Employer Name and Address:

Prime Grill
E & D LLC
60 East 49th Street

TOTAL \$16,708.49

* Column 4-Code

FLSA	1
PCA	2
SCA	3
DBRA	4
CWHSAA	5
CCPA	6
FMLA	7

Signed: _____

New York, NY 10017

Form WH-58

EXHIBIT B

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
26 Federal Plaza
Suite 3700



New York, NY 10278-0190

June 08, 2007

Mr. Joseph Allaham
E & D LLC via Prime Grill
60 East 49th Street
New York, NY 10017

Dear Mr. Allaham:

This will acknowledge receipt of (a) check(s), drawn in favor of the person(s) listed below, for back wages due under the Fair Labor Standards Act.

1. US Dept. of Labor	\$8,894.09
2. US Dept. of Labor	\$3,907.20

Sincerely,

A handwritten signature in black ink, appearing to read "Philip A. Jacobson".
Philip A. Jacobson
District Director